

Appeal from a decision of the Idaho State Office, Bureau of Land Management, declaring geothermal lease I-19604 terminated for late payment of lease rental.

Affirmed.

1. Geothermal Leases: Reinstatement--Geothermal Leases: Termination

Neither reasonable diligence nor justification is demonstrated by the holder of a geothermal lease who makes a tardy rental payment because of a computer malfunction and coincident change of business offices.

APPEARANCES: Charles J. Muoio, Vice President, Hydra-Co Enterprises, Inc., Syracuse, New York, for appellant.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Hydra-Co Enterprises, Inc., has appealed from a decision of the Idaho State Office, Bureau of Land Management (BLM), dated May 28, 1986, declaring geothermal lease I-19604 terminated for appellant's failure to pay annual rental on or before the lease anniversary date. In support of its decision, BLM cited sections 3 and 4 of appellant's lease, requiring appellant to pay annual rent in the amount of \$2 per acre on or before the lease anniversary date, failing in which the lease would terminate by operation of law. The decision also provided that appellant's lease could be reinstated if appellant could show that its tardy payment was either justifiable or not due to a lack of reasonable diligence.

There appears to be no question that appellant was tardy in paying its annual rent. Lease I-19604, having been issued effective April 1, 1984, had an April 1 anniversary date. Appellant's rent was, therefore, required to be paid annually on or before April 1. The check representing payment for lease I-19604, dated April 25, 1986, was received by the Minerals Management Service (MMS) on or about May 1, 1986. BLM properly found, therefore, that lease I-19604 had terminated by operation of law. See 30 U.S.C. | 1004(c) (1982).

In its notice of appeal, appellant states:

HYDRA-CO would like to explain the circumstances which led to the tardy submittal of lease payment. The main offices of HYDRA-CO were moved to a new building on April 18, 1986. Some

four weeks before the move, a system malfunction occurred in the office's server computer which effectively destroyed several months' worth of accounting ledgers of receivables and payables for the company. In the confusion of recreating all the lost data while at the same time preparing for and carrying out the move from one building to another, many accounts were unfortunately tardy in being paid. In the week immediately following the move, the accounting system was brought up to speed and all pending or tardy transactions were made current.

The Secretary's authority to reinstate a lease that has been terminated for late payment is set forth at 30 U.S.C. | 1004(c) (1982). That section states in part:

Geothermal leases shall provide for

* * * * *

* * * payment in advance of an annual rental of not less than \$1 per acre or fraction thereof for each year of the lease. If there is no well on the leased lands capable of producing geothermal resources in commercial quantities, the failure to pay rental on or before the anniversary date shall terminate the lease by operation of law: * * * Provided further, That, where any lease has been terminated automatically by operation of law under this section for failure to pay rental timely and it is shown to the satisfaction of the Secretary of the Interior that the failure to pay timely the lease rental was justifiable or not due to a lack of reasonable diligence, he in his judgment may reinstate the lease if-

(1) a petition for reinstatement, [1/] together with the required rental, is filed with the Secretary of the Interior; and

(2) no valid lease has been issued affecting any of the lands in the terminated lease prior to the filing of the petition for reinstatement; * * *. [Emphasis supplied.]

Regulation 43 CFR 3244.2-2(b)(2) defines "reasonable diligence" to normally require "sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment."

In Leonard Lundgren, 53 IBLA 149 (1981), the Board noted that mailing the rental to an out-of-town destination the day before it was due did not constitute reasonable diligence. Where, as here, appellant's check was

^{1/} We construe appellant's notice of appeal from the State Office decision to be a petition for reinstatement. The decision suggests that BLM was temporarily retaining the rent submitted by appellant. See Dome Petroleum Corp., 59 IBLA 370 n.2 (1981).

dated April 25, 1986, and mailed on April 29, 1986, the conclusion is clear, as BLM found, that appellant was not reasonably diligent in paying its rent.

A failure to exercise reasonable diligence may be justifiable if it is demonstrated that at or near the anniversary date there existed sufficient extenuating circumstances outside the lessee's control which affected its actions in paying the rental fee. Proximity in time and causality of the unfavorable occurrence are essential elements. U.S. Geothermal Corp., 61 IBLA 265, 267 (1982).

In Melbourne Concept Profit Sharing Trust, 46 IBLA 87 (1980), the Board stated that a computer malfunction, which caused a check to issue in an insufficient amount, did not justify late payment. The basis for this conclusion was the notion that a lessee is ultimately in control of and is responsible for the performance of the business machines it uses. See also Joseph F. Broda, 71 IBLA 390 (1983); Tenneco Oil Co., 71 IBLA 339 (1983); and Trend Resources Limited, 64 IBLA 383 (1982).

With respect to appellant's argument that its change of offices justified tardy payment, the Board rejected a similar argument in Mono Power Co., 28 IBLA 289 (1976). That case involved a tardy payment allegedly caused by the remodeling of company offices. Therein at page 291, the Board held that a lessee may not rely upon the bulk or complexity of its business organization so as to make justifiable an action which would not be held to be justifiable for an individual lessee. See also David E. Cooley, Jr., 62 IBLA 87 (1982).

[1] Whether considered individually or jointly, appellant's reasons for tardy payment, *i.e.*, computer malfunction and office move, are insufficient to demonstrate its diligence in or justification for making a tardy payment. Mere inadvertence, which may permit the Secretary to reinstate an oil and gas lease under the Federal Oil and Gas Royalty Management Act of 1982, 30 U.S.C. § 188(d)(1) (1982), is not available to the holder of a geo-thermal lease.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the State Office is affirmed.

Franklin D. Arness
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Wm. Philip Horton
Chief Administrative Judge